

9089

DOCKETED
-HRCUNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'89 AUG 25 10:05

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges
John H. Frye, III, Chairman
Dr. James H. Carpenter
Dr. Jerry R. KlineDOCKETED
-HRC

SERVED AUG 25 1989

| |
|---|
| <p>In the Matter of</p> <p>Kerr-McGee Chemical Corporation</p> <p>(West Chicago Rare Earths Facility)</p> |
|---|

Docket No. 40-2061-ML

ASLBP No. 83-495-01-ML

August 24, 1989

MEMORANDUM AND ORDER
(Concerning EPA's Review of the SFES)

This proceeding concerns Kerr-McGee's application to dispose of thorium mill tailings located on its West Chicago site. In LBP-84-42, 20 NRC 1296, reconsideration denied, LBP-85-3, 21 NRC 244 (1985), acting at the request of intervenors, the State of Illinois and its Department of Nuclear Safety, we held that Staff must prepare and circulate for comment a supplement to its FES which had been filed in the proceeding. The supplement was required because in the FES, Staff had considered only temporary storage of the thorium mill tailings on that site, although the FES made it clear that on site disposal was the most likely course of action. Staff complied with our directive

B908300063 B90824
PDR ADDCK 04002061
C PDR

D502

by issuing the SFES in April of this year. In the SFES, Staff concluded that Kerr-McGee's application to permanently dispose of the thorium mill tailings on its West Chicago site should be approved.

The U.S. Environmental Protection Agency is currently reviewing the SFES. On July 12, 1989, Staff issued a Board Notification (BN-89-6) advising us of that review. In BN-89-6, Staff informed us that EPA had requested a number of extensions of time in which to complete its review, the last of which apparently expired on July 28. Staff also advised that EPA had concerns over the SFES, wanted its comments brought to our attention, and that "EPA may choose to act on this matter pursuant to 40 CFR § 1504." Part 1504 of 40 CFR sets forth the Council on Environmental Quality's procedures to resolve Federal interagency disagreements over proposed actions which might cause unsatisfactory environmental consequences.

On August 21, 1989, Illinois filed and served a copy of a letter of July 27 from EPA's Region 5 to Staff which indicates that:

EPA has reviewed the SFES pursuant to NEPA and § 309 of the Clean Air Act;

Based on its review of the draft SFES, EPA had significant reservations, concerns about the public health, and concerns that feasible alternatives were not fairly analyzed, all of which were conveyed to Staff; and

Many of EPA's concerns still have not been met and, as a result, more information is required before EPA may make a "determination."

The letter indicates that EPA's concerns lie in nine areas:

1. Radiation effects;
2. Groundwater impacts;
3. Surface water impacts;
4. Compliance with EPA regulations for long term maintenance;
5. Compliance with NRC siting criteria;
6. Off-site transportation costs and health effects;
7. Consideration of in-situ vitrification processes;
8. Off-site waste areas; and
9. Resource Conservation and Recovery Act issues.

The letter enclosed an eleven page description of EPA's concerns and request for additional information.

It is clear that there is at least some overlap between EPA's concerns and the contentions pending in this proceeding. It is also clear that EPA believes that Kerr-McGee's application raises concerns under certain of EPA's regulations. In light of this, the Board wishes the parties to address the following questions:

1. To what extent do EPA's concerns detailed in the enclosure to its July 27 letter impact the admitted contentions in this proceeding?

2. To the extent that EPA's concerns impact the admitted contentions, how should those concerns be taken into account in this proceeding?

3. What is the extent of EPA's regulatory jurisdiction over Kerr-McGee's application?

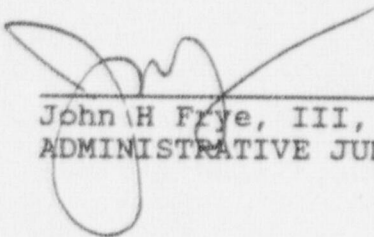
4. Are any EPA approvals required before the Staff's preferred alternative may be implemented? If so, please indicate the specific regulatory provisions involved and the status of any applications pending before EPA.

5. Is NRC subject to the procedures set out in 40 CFR Part 1504?

The parties' responses to the above questions are to be filed and served by September 8, 1989.

It is so ORDERED.

For the Atomic Safety
and Licensing Board



John H. Frye, III, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland
August 24, 1989

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

KERR-MCGEE CHEMICAL CORPORATION

(West Chicago Rare Earths Facility)

Docket No. (s) 40-2061-ML

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB M&C (RE: EPA'S SFES REVIEW) have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

Administrative Judge
John H. Frye, III, Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
Jerry R. Kline
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Administrative Judge
James H. Carpenter
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

John C. Berghoff, Jr., Esq.
Chadwell & Kayser, Ltd.
8500 Sears Tower
Chicago, IL 60606

Richard A. Meserve, Esq.
Covington & Burling
P.O. Box 7566
Washington, DC 20044

Joseph A. Young, Jr., Esq.
Kerr-McGee Chemical Corporation
123 Robert S. Kerr Avenue
Oklahoma City, OK 73125

Stephen J. England, Esquire
Department of Nuclear Safety
1035 Outer Park Drive
Springfield, IL 62704

Nancy J. Rich, Esq.
Assistant Attorney General
Office of the Attorney General
100 West Randolph
Chicago, IL 60601

Dated at Rockville, Md. this
25 day of August 1989

Patty Henderson
Office of the Secretary of the Commission